

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

FILED
07 FEB -5 AM 9:12

U.S. COURTS
SOUTHERN DISTRICT
OF TEXAS

TRANSPORTES CHIHUAHUA, INC.
Plaintiff,

V.

NTEX TRANSIT, INC.
Defendant.

§
§
§
§
§
§
§

Case No. L-05-CV-226

DEFENDANT'S MOTION TO DISMISS TO DISMISS WITH PREJUDICE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant NTex Transit, Inc. and requests this Honorable Court to dismiss Cause Number L-05-CV-226 with prejudice for the ground set forth herein.

I.

A. Defendant NTEX Transit, Inc. request's dismissal of Cause Number L-05-CV-226 for the following reason:

1. Plaintiff has been totally non-responsive to all of the courts orders with regard to filing Discovery/Joint Management Plan.
2. Plaintiff has completely disregarded the courts orders to appear at scheduled hearings.
3. Plaintiff has done absolutely nothing in furtherance and preparation of this case.
4. Plaintiff has employed dilatory tactics including continuing to prosecute its claims when they have been properly removed from State Court. Specifically, Plaintiff caused to be filed a motion to dismiss in the instant case and has represented that it has initiated a separate suit in State Court wherein it purports to join other defendants that had

not been included in the instant case in contravention of rule 19, Federal Rule of Civil Procedure.

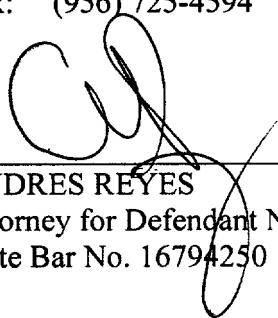
5. Defendant seeks dismissal of this case in that Plaintiff's failure to obey the orders of this court as well as his failure to observe all federal rules of procedure are tantamount to an abuse of process.

B. Defendant submits that because of Plaintiffs conduct that Defendant has been prejudiced to a high degree. Such conduct has interfered with the orderly judicial process for which Plaintiff and Plaintiffs counsel bear sole responsibility. Additionally, the court has entered clear orders which have placed Plaintiff and Plaintiffs counsel on notice of their failure to comply with the lawful orders entered by this Honorable Court. Finally, there exist no lesser sanctions which would properly address Plaintiffs abuse of process. Olsen v. Mapes, 333 F.3d 1199, 1204 (10th Cir. 2003), and Hutchins v. A.G. Edwards & Sons Inc. 116 F.3d 1256, 1260 (8th Cir. 1997).

WHEREFORE, Plaintiff requests this Honorable Court to dismiss Cause Number L-05-CV-226, with prejudice, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

LAW OFFICE OF ANDRES REYES
CAPITOL CENTRE
401 E. Hillside, 2nd Floor
Laredo, Texas 78041
Tel: (956) 712-3633
Fax: (956) 725-4594



ANDRES REYES
Attorney for Defendant NTEX
State Bar No. 16794250

CERTIFICATE OF SERVICE

I certify that on February **2**, 2007 a true and correct copy of Defendants Motion to Dismiss With Prejudice was served by facsimile transmission on Tony Conde, Jr. at (915) 595-2438.



ANDRES REYES

Transaction Report

Send

Transaction(s) completed

No.	TX	Date/Time	Destination	Duration	P. #	Result	Mode
124	FEB-02	17:26	915 595 2438	0'09'13"	045	OK	N ECM

LAW OFFICE OF ANDRES REYES
 401 E. HILLSIDE, CAPITOL CENTRE
 LAREDO, TEXAS 78041
 TEL: (956) 712-3633 FAX: 725-4594

FACSIMILE TRANSMITTAL SHEET

TO:

TONY R. CONDE, JR.
 Attorney and Counselor at Law
 2244 Trawood, Suite 206
 El Paso, Texas 79935

FROM:

Andres Reyes
 Lupita

FAX:

915-595-2435

DATE:

02/02/07

PHONE:

915-595-2438

TOTAL NO. OF PAGES INCLUDING COVER:

45

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

YOUR REFERENCE NUMBER:

Cause No. L-05-CV-226;
 Transportes Chihuahua, Inc.
 v. NTEX

Defendant's Motion To Dismiss with
 Prejudice
 (4 pages)
 Response to Plaintiffs Brief in Support
 of Motion To Dismiss without
 Prejudice (40 pages)

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS: